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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,273

12/22/2005

James R. Burfiend

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03/04/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

STEPHENS III, JOSE S

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,273	<b>Applicant(s)</b> BURFIEND ET AL.	
	<b>Examiner</b> JOSE S. STEPHENS III	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's amendment filed 11 December 2008. Claims 1-6 and 8-11 are pending in the application; claim 7 has been cancelled; and claims 10 and 11 are new.

### ***Claim Objections***

2. Claim 8 is objected to because of the following informalities: claim 8 depends on a cancelled claim, and for the purpose of examination claim 8 is assumed to depend on claim 6. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura (US Patent 4,669,124).

Regarding claims 1 and 6 and the intended use of the claimed invention “for a fluid, for use with a personal hygiene device”, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed

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structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

With respect to claim 1, the figure of Kimura teaches a flexible container for a fluid, capable of being used with a personal hygiene device, comprising a flexible bag 1 having a front panel portion, a rear panel portion, and further having a gusset (see the figure) along at least one longitudinal side thereof which connects the front and rear panel portions and allows the front and rear panel portions to expand away from each other when the bag is filled, wherein the bag has a top edge which includes a spout element 3 constructed to permit exit of fluid from the bag after filling thereof, wherein the top edge is sealed to the spout element.

With respect to claim 3, the figure of Kimura teaches the flexible bag includes gussets along both longitudinal sides.

With respect to claim 4, the figure of Kimura teaches the bag is rectangular in configuration and includes two sealed wing portions (the combination of sheets 4 and 5) on either side of the spout element, the wing portions extending above a remainder of the bag, alongside the spout element, wherein the sealing of the wing portions is arranged such that the gussets can expand fully below the wing portions.

With respect to claim 6, the figure of Kimura teaches a flexible container for a fluid, capable of being used with a personal hygiene device, comprising a flexible bag 1 having a front panel portion and a rear panel portion and sealed along a bottom edge thereof (see the figure), wherein the bag includes two sealed wing portions (the combination of sheets 4 and 5) on either side of a central portion at a top end thereof,

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wherein the central portion includes a spout element 3 which is constructed to permit exit of fluid from the container after it has been filled, wherein the wing portions extend above a remainder of the bag, permitting the remainder of the bag to fill completely.

With respect to claims 2 and 9, the figure of Kimura teaches the container of Kimura is capable of holding fluid for use with a toothbrush.

With respect to claims 10 and 11, the figure of Kimura teaches the spout element includes a valve 7 to permit exit of fluid therefrom.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura (US Patent 4,669,124) as applied to claims 4 and 6 above, and further in view of Shavit (US Patent 4,394,936).

With respect to claims 5 and 8, Kimura does not teach the wing portions terminate approximately in the plane of a top edge of the spout element. However, figure 1 of Shavit teaches a flexible container that comprises wing portions (see either side of the spout) that terminate approximately in the plane of a top edge of a spout element 7. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Kimura by raising the wing portions of the container to have them terminate approximately in the plane of a top edge of the spout element, as taught by Shavit, to allow the container to hold more fluid.

### ***Response to Arguments***

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are containers analogous to applicant's instant invention.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JILA M MOHANDESI/

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Primary Examiner, Art Unit 3728

JSS  
03/01/09